

REMARKS

The present claims relates to methods of producing an implant loaded with a pharmaceutical active.

Preliminary matters

Applicants wish to thank the Examiner for the courtesy extended by the Examiner in holding a telephone conversation with Applicants' representative on August 1, 2007. Pursuant to that telephone conversation, Applicants submit herewith a supplemental Amendment that Applicants believe is sufficient to reopen prosecution.

Amendment summary

The amendments herein are the same amendments submitted in the Amendment of July 6, 2007.

Upon entry of this Amendment, Claims 60-69, 73-83, and 85-90 will be pending.

Claims 77 and 89 have been placed into independent form via incorporation of the subject matter of Claims 70 and 57, respectively, upon which Claims 77 and 89 previously depended.

Other claims have been amended to correct their dependencies in view of the amendments to Claims 77 and 89 and to place them into correct form by amending the phrase "the said" to "the."

Claims 39-57, 70, and 84 are canceled.

No new matter is added by this Amendment, and Applicants respectfully submit that entry of this Amendment is proper.

Status of the claims

Claims 39-48 and 52-56 have been rejected under 35 U.S.C. § 102 as allegedly been anticipated by Porssa et al. (U.S. Patent No. 6,251,964) (hereinafter “Porssa”). Claims 49-76, 83-88, and 90 have been rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Porssa in view of both WO-A-98/15575 (hereinafter “WO ‘575) and Sahatjian et al. (U.S. Patent No. 5,674,192) (hereinafter “Sahatjian”). Finally, Claims 39-90 have been provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as allegedly being unpatentable over co-pending U.S. Application No. 10/842,461 in view of WO ‘575 and Sahatjian.

Response to rejections under 35 U.S.C. §§ 102 and 103

With respect to the rejection of Claims 39-48 and 52-56 under 35 U.S.C. § 102, Applicants respectfully note that these claims are no longer pending. Accordingly, Applicants respectfully submit that the rejection has been rendered moot and respectfully request the withdrawal of the § 102 rejection.

With respect to the rejection of Claims 49-76, 83-88, and 90 under 35 U.S.C. § 103, Applicants note that the present claims have been amended to depend (either directly or indirectly) from Claims 77 or 89, which have each been placed into independent form. Claims 77 and 89 were not subject to this rejection, and therefore, Applicants respectfully submit that the § 103 rejection has been rendered moot. Applicants respectfully request the withdrawal of the § 103 rejection.

Applicants note that the Advisory Action set forth the position that the subject matter of previous Claim 39 is the same as the elements introduced into either of claims 77 or 89 by the

Amendment filed July 6, 2007. Applicants respectfully disagree. Previously pending claim 39 recited a step (a) that included "a coating having a dry thickness of at least 0.1 μ m;" and a step (b) that recited "a pharmaceutical active." On the other hand, neither Claim 77 nor Claim 89 recites a coating having a dry thickness of at least 0.1 μ m. In addition, Claim 77 recites in step (b) a pharmaceutical active which is a protein. Claim 89 recites a pharmaceutical active which is a nucleic acid. Claim 39 did not include either a recitation of a protein or a nucleic acid as the pharmaceutical active. Accordingly, Applicants respectfully submit that the amendments to Claims 77 and 89 do not reflect the incorporation of the subject matter of Claim 39 into those respective claims.

Response to provisional double patenting rejection

Applicants respectfully submit that the claims of copending Application No. 10/842,416 (the '416 Application) do not render obvious the presently claimed subject matter, and respectfully submit that the provisional double patenting rejection should be withdrawn.

The present claims recite that the cross-linked water-swellable polymer matrix comprises a polymer having pendant zwitterionic groups and pendant cationic groups. The claims of the '416 Application do not recite or render obvious a polymer having pendant zwitterionic groups and pendant cationic groups used in an implant loaded with pharmaceutical active, as the present claims recite. Therefore, Applicants respectfully submit that claims of the '416 Application are not a proper basis for a double patenting rejection of the present claims.

Applicants respectfully request the reconsideration and withdrawal of this provisional double patenting rejection.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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